FILE COPY

APR 13 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1099

THE TRAILMOBILE COMPANY AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL WORKERS OF AMERICAN, U. A. W. C. I. O. LOCAL No. 392,

Petitioners,

vs.

LAWRENCE WHIPPS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Monroe R. Waite,
Philip J. Schneider,
Counsel for Petitioner,
The Trailmobile Company,
Sol. Goodman,
Counsel for Petitioners,
U.A.W.-C.I.O.

Waite, Schindel, & Bayless,
Herman A. Bayless,
Herbert Shaffer,
John R. Johnston,
Of Counsel.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Opinion below	2
Jurisdiction	2
Question presented	2
Statement of case	3
Specification of errors to be urged	6
Reasons for granting the writ	7
Conclusion	9
Appendix "A"	10

Statutes Cited

Judicial Code, Section 240a, as amended by the Act of February 13, 1925	2
Selective Training and Service Act of 1940, as amended (U. S. C. A. Title 50, App. Sec. 308, c. 720, sec. 8, 54 Stat. 890, as amended July 28, 1942, c. 529, sec. 2, 56 Stat. 724, as amended Dec. 8, 1944, c. 548, sec. 1, 58 Stat. 798)	2

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1099

THE TRAILMOBILE COMPANY AND INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL WORKERS OF AMERICA, U. A. W.-C. I. O., LOCAL No. 392,

Petitioners,

vs.

LAWRENCE WHIRLS,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Petitionesr herein pray that a Writ of Certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit, entered April 5, 1946, affirming a judgment in favor of the Respondent against The Trailmobile Company and the International Union, United Automobile, Aircraft and Agricultural Workers of America, UAW-CIO., Local 392, and granting a mandatory injunction in favor of Respondent.

Opinion Below

The Opinion in the United States Circuit Court of Appeals for the Sixth Circuit (R. 70), is not yet reported.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered April 5, 1946 (R. 70). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by Act of February 13, 1925.

The jurisdiction of the United States District Court which rendered the judgment from which the appeal was taken was conferred by the Selective Training and Service Act of 1940, as amended (U. S. C. A. Title 50, App. §308, c. 720, §8, 54 Stat. 890, as amended July 28, 1942, c. 529, §2, 56 Stat. 724, as amended Dec. 8, 1944, c. 548, §1, 58 Stat. 798). The pertinent sections are printed as Appendix A.

Question Presented

Whether subdivisions (b) and (c) of Section 8 of the Selective Training and Service Act of 1940, as amended, gives to a War Veteran who was restored to the position of employment occupied by him prior to his military service, and who was continuously so employed for more than one year, the right to retain the seniority status held by him when he entered the service after that one year reemployment period and "as long as the Act remains in effect and as long as Whirls remains in the service of the appellant company" notwithstanding the fact that his union, through collective bargaining, had changed the seniority provisions of the employment contract.[1]

[1] The changed seniority provision, made after the employee was reemployed for a full year, was due to the fact that the parent corporation purchased the assets of its subsidiary corporation; the employees changed union affiliation, and the employees of the subsidiary were held to be new employees by the newly certified union, which the Ohio courts held they had a right to do.

Statute Involved

The pertinent provisions are set forth in Appendix A.

Statement of Case

Respondent, Whirls, was employed by The Highland Body Manufacturing Company, a wholly-owned subsidiary of The Trailmobile Company, on February 8, 1935, and worked for that company continuously until he entered the Armed Forces of the United States on October 23, 1942. Thereafter he was honorably discharged and returned to his employment with The Highland Company on May 3, 1943. His seniority status and pay were not reduced or changed while he continued to work for that company. On December 31, 1943, that company was dissolved, all of its assets were sold to The Trailmobile Company, and on January 1, 1944, he was transferred to the payroll of The Trailmobile Company. His Seniority status continued as it was with The Highland Company and was not altered until July 7, 1944, when, by collective bargaining, the certified union changed his and all other Highland employees' seniority to January 1, 1944. His status and pay are not in question in this case. His claim to seniority is the question involved here. The facts were stipulated and appear at page 1.

The Circuit Court of Appeals held that the Selective Training and Service Act guaranteed the preservation of the status quo of the seniority status of Whirls (as it existed as the time he was inducted into the armed forces) "as long as the Act remains in effect and as long as Whirls remains in the service of the appellant company."

When he was inducted into the armed forces, Whirls was working under a labor union collective bargaining agreement by which seniority was to be determined from the last

The question here presented is one of great public interest and affects the rights of hundreds of thousands of veterans and the rights of hundreds of thousands of nonveteran employees. Collective bargaining agreements are being constantly made and remade each year affecting the seniority status of innumerable employees whether veteran or nonveteran and the chaotic labor conditions at this plant are representative of the chaotic conditions which would prevail in other plants unless this Court finally determines the issues herein.

In this case in the District Court the union intervened as a party defendant, in the Sixth Circuit Court it filed its briefs, and argued the case, but the International Officers of the Union, by leave, filed an additional brief strongly urging the national import of a decision such as now rendered by the Sixth Circuit Court of Appeals.

The broad scope of the decision granting permanent seniority to veterans is one of vast and far-reaching importance to employers and employees both veteran and nonveteran. Certiorari having been granted in the *Fishgold* case, and that case having been set for argument before this court, it is submitted that this court should consider this case as promptly as it is giving consideration to the *Fishgold* case.

Pursuant to Section 8(c) of the Selective Training and Service Act the trial court advanced this case on the docket for "speedy hearing" and rendered a prompt decision. Likewise the Circuit Court of Appeals advanced this case on the docket for argument and rendered its decision promptly.

It is respectfully urged that this court likewise should advance the case to the earliest date available.

An additional reason for such request, we urge, is that if the decision of the Circuit Court of Appeals is sustained,

it will place in jeopardy the positions of returning veterans after the expiration of one year from their reemployment and will defeat the very purpose of the statute enacted for the benefit of returning veterans, as, in order to get rid of such status quo seniority, which continues so long as the veteran is employed, the majority union members may compel the employer to discharge such returning veteran after the expiration of said one-year period. As in this case, the union might expel the veteran from the union, and thereby compel this employer to discharge such veteran under its closed shop contract with the union.

Conclusion

For the reasons stated, it is respectfully submitted that this petition for certiorari should be granted.

Morison R. Waite,
Philip J. Schneider,
Counsel for Petitioner,
The Trailmobile Company,
Sol Goodman,
Counsel for Petitioners,
U.A.W.-S.A.O.

Waite, Schindel & Bayless,
Morison R. Waite,
Herman A. Bayless,
Herbert Shaffer,
Philip J. Schneider,
John R. Johnston,
Of Counsel.

APPENDIX A

U. S. C. A. TITLE 50, APP. § 308. As amended Dec. 8, 1944, c. 548, § 1, 58 Stat. 798.

(b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within ninety days after he is relieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—

(A) if such position was in the employ of the United States Government, its Territories or possessions, or the District of Columbia, such person shall be restored to such position or to a position of like seniority, status, and pay;

(B) if such position was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so;

(C) if such position was in the employ of any State or political subdivision thereof, it is hereby declared to be the sense of the Congress that such person should be restored to such position or to a position of like seniority, status, and pay.

U. S. C. A. TITLE 50, § 308. As amended July 28, 1942, c. 529, § 2, 56 Stat. 724.

(c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of active military

service, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was ordered into such service, and shall not be discharged from such position without cause within one year after such restoration."